

DECISION

PNM
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-211449**DATE:** July 11, 1983**MATTER OF:** Kenneth J. Bray - Reimbursement of
Relocation Expenses - Violation of Service
Agreement**DIGEST:**

Employee accepted a transfer from Los Angeles, California, to Cambridge, Massachusetts, and signed the required 12-month service agreement. He resigned after 5 months and is therefore obligated to reimburse the Government for his relocation expenses. The fact that the employee had previously transferred from Cambridge to Los Angeles in a position which gave him "transfer of function rights" back to Cambridge did not in itself entitle him to perform the return travel to Cambridge at the Government's expense. An employee is required to sign and fulfill the terms of a new service agreement in connection with each permanent change of station within the continental United States. See paragraph 2-1.5a(1)(a) of the FTR.

The issue in this decision is whether a transferred employee who did not complete the required term of Government service at his new duty station is entitled to relocation expenses incident to his transfer. We hold that the employee is not entitled to relocation expenses since he violated his service agreement for personal reasons which were not beyond his control and which were not acceptable to the agency. Therefore, the Government is entitled to seek recovery of any funds it has expended for the employee's travel, transportation and allowances in connection with his transfer.

This decision is in response to a request from Mr. Richard A. Keene, Chief of the Accounting Branch at the Department of Transportation in Cambridge, Massachusetts, concerning the claim of Mr. Kenneth J. Bray for travel and transportation expenses incident to his transfer.

Mr. Bray, a former employee of the Transportation Systems Center (TSC), United States Department of Transportation, was transferred in June 1978 from TSC's main office in Cambridge, Massachusetts, to a regional office in

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Los Angeles, California. His position in Los Angeles was that of an Electronics Engineer, at grade GS-13. The job announcement that advertised the position which Mr. Bray filled in Los Angeles stated that the job was "of a temporary project nature," and that "[u]pon completion of the portion of the project * * * in Los Angeles * * * the candidate selected for this position would have 'transfer of function rights'" back to Cambridge.

In connection with his transfer, Mr. Bray was authorized travel and transportation expenses for his family and household goods from his existing residence near Cambridge to his new station in Los Angeles. In consideration of the Government's payment of his relocation expenses, Mr. Bray signed a transfer agreement, as required by section 5724(i) of Title 5, United States Code, in which he agreed to remain in the Government service for a period of 12 months after the effective date of his transfer. The official transfer date was set for August 23, 1978. Mr. Bray remained in Government service in Los Angeles for well over 1 year, thus fulfilling the terms of the transfer agreement.

In July 1981, Mr. Bray applied for a permanent position at the GS-14 level, which was then open in TSC's Cambridge office. Although the position was to be permanently located in Cambridge, the job announcement stated that the employee initially would be assigned to Los Angeles for approximately 1 year. Mr. Bray was hired for this position, and given a permanent promotion to grade GS-14, effective August 9, 1981.

On June 9, 1982, in anticipation of Mr. Bray's transfer back to Cambridge, the agency again asked him to sign a service agreement in which he would promise to remain in the Government service for 12 months following the effective date of his transfer. Mr. Bray executed the service agreement as requested. Thereafter, on September 28, 1982, Mr. Bray's official duty station was changed from Los Angeles to Cambridge, as expected. Mr. Bray moved his family and belongings back to Cambridge at that time, and resumed work at the new location. The agency paid all of Mr. Bray's travel and transportation expenses. The total cost of the family's move from Los Angeles to Cambridge was \$20,799.63.

Thereafter, Mr. Bray resigned from Government service, effective March 4, 1983. Since Mr. Bray resigned from his

position within 12 months after the effective date of his transfer, he violated the express terms of his service agreement. The agency subsequently informed him that pursuant to 5 U.S.C. § 5724(i), it would take steps to recover the money spent by the Government in connection with his transfer.

In a letter to the agency dated March 14, 1983, Mr. Bray requested that TSC seek our Office's decision on whether he should be required to reimburse the Government for his relocation expenses. Mr. Bray asserts that when TSC initially transferred him from Cambridge to Los Angeles in 1978, the agency obligated itself to pay both for his move to Los Angeles and his move back to Cambridge, "in consideration of [his] service in Los Angeles." Mr. Bray states that when he was transferred back to Cambridge in 1982, he signed a new 1-year service agreement only because he was told that he could not get travel orders to make the move unless he signed such a form. He maintains that he signed the forms "without raising the point that the TSC was already obligated" because the issue seemed academic to him, since at that time he fully intended to stay with TSC in Cambridge for over 1 year. In sum, Mr. Bray contends that since TSC was already obliged to return him to Cambridge, no additional consideration (i.e., fulfillment of the second service agreement) was necessary to support the Government's payment of his relocation expenses. Accordingly, he maintains that he should not now be required to reimburse the Government for those expenses.

The payment of travel, transportation and relocation expenses of transferred Government employees is authorized under 5 U.S.C. §§ 5724 and 5724a (1976) as implemented by the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR). Section 5724(i) of Title 5, United States Code, specifically provides that:

"An agency may pay travel and transportation expenses * * * and other relocation allowances under this section and sections 5724a and 5726(c) of this title when an employee is transferred within the continental United States only after the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. If

the employee violates the agreement, the money spent by the United States for the expenses and allowances is recoverable from the employee as a debt due the United States."

The regulations implementing the above statute further provide at FTR paragraph 2-1.5a(1)(a) that "[a] signed agreement for 12 months' service shall be required in connection with each permanent change of station."

Thus, if an employee violates a service agreement executed in connection with his transfer, the agency must take steps to recover any funds it expended in relocating the employee, unless he was separated from his position for reasons beyond his control and acceptable to the agency. Dr. William Post, Jr., B-196795, June 5, 1980. Our Office has previously stated that the employing agency is primarily responsible for determining whether an employee's separation from service was for a reason that was beyond his control and is otherwise acceptable to the agency. Arnold M. Biddix, B-198938, March 4, 1981; Ralph W. Jeska, B-193456, December 28, 1978. In the absence of clear and convincing evidence that the agency's decision was arbitrary or capricious, we will not substitute our judgment for that of agency officials who are in a better position to investigate and resolve the matter. Arnold M. Biddix, above; William C. Moorehead, 56 Comp. Gen. 606 (1977).

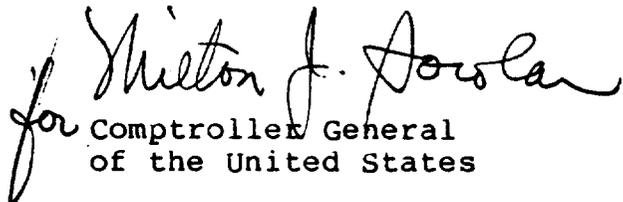
Mr. Bray transferred from Los Angeles back to TSC's Cambridge office on September 28, 1982. He remained in that position until March 4, 1983, when he resigned in order to accept a position in the private sector. Altogether, Mr. Bray remained in Government service for approximately 5 months after the effective date of his transfer. He thus did not fulfill the time-of-service obligation created by his Government service agreement, and therefore did not earn the right to be reimbursed for his relocation expenses incident to his move back to Cambridge.

The agency has determined that Mr. Bray's separation from Government service was not for reasons that were beyond his control and acceptable to the agency. To the contrary, the agency asserts that Mr. Bray left TSC of his own volition in order to pursue a career in the private sector. On the basis of the record before us, we cannot say that this determination by the agency was in any way arbitrary or

capricious. Furthermore, Mr. Bray has presented no evidence to dispute the agency's finding that he left Government service of his own free will.

With regard to Mr. Bray's assertion that the Government obligated itself to pay for his relocation expenses both from Cambridge to Los Angeles, and from Los Angeles back to Cambridge, the law clearly provides that a Federal employee must fulfill the terms of a 12-month service agreement in connection with each permanent change of duty station within the continental United States. See paragraph 2-1.5a(1)(a) of the FTR, above. While the agency may have given Mr. Bray "transfer of function rights" (i.e., the right to transfer back) to Cambridge at some future time, it did not, and legally could not, have given him an entitlement to relocation expenses back to Cambridge based on his time-of-service in Los Angeles. Rather, under 5 U.S.C. § 5742(i), Mr. Bray's entitlement to travel and transportation expenses back to Cambridge was contingent on his fulfillment of the 12-month service agreement which he signed, but failed to fulfill when he voluntarily resigned.

Accordingly, since Mr. Bray violated his 12-month service agreement by voluntarily leaving the agency after only 5 months of employment, the Government should initiate proceedings to recover from Mr. Bray any funds expended in connection with his relocation to Cambridge.


for Comptroller General
of the United States